

REVISED INITIAL STATEMENT OF REASONS

TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PRISON TERMS CHAPTER 3. PAROLE RELEASE ARTICLE 2. INFORMATION CONSIDERED

New Section 2240 Psychological Risk Assessments

This new section codifies the Board of Parole Hearing's guidelines for the preparation of Psychological Risk Assessments for parole consideration hearings held pursuant to Penal Code Sections 3041 and 3041.5.

Inmates sentenced to life terms with the possibility of parole appear before the Board of Parole Hearings (BPH) for a hearing to determine whether they are suitable for parole, pursuant to Penal Code section 3041.

Existing BPH regulations provide a framework of the factors to be considered in making this determination. *See* California Code of Regulations, Title 15, sections 2282 and 2402. These sections state that an inmate's past and present mental state and present attitude towards their life crime shall be considered, along with any other information bearing upon the inmate's suitability for parole. In addition to the BPH regulations, Penal Code section 5068 provides for the preparation of a psychological evaluation before the release of an inmate committed to a term of life with the possibility of parole.

Historically, the California Department of Corrections' (CDCR) mental health staff prepared the psychological evaluations for the parole consideration hearings conducted by BPH. In 2006, the BPH formed its own Forensic Assessment Division (FAD) Lifer Unit, comprised of psychologists, to prepare the psychological evaluations. The formation of FAD addressed numerous concerns that had been raised about the evaluations, and enabled CDCR's mental health professionals to devote resources to providing mental health treatment to inmates, rather than conducting evaluations, pursuant to *Coleman v. Schwarzenegger* No. Civ S-90-0520 LKK JFM (E.D. Cal.).

Additionally, in the class action lawsuit of *In re Rutherford*, Marin County Superior Court, Case No. SC135399A, it was determined that the untimely preparation of psychological evaluations for parole consideration hearings contributed to the backlog of hearings, which gave rise to this ongoing litigation. The court issued several orders relative to the psychological evaluation process, including an order requiring the development of a streamlined psychological risk assessment tool for use at parole consideration hearings and an order requiring a minimum of thirty-five qualified psychologists to be in place to prepare psychological evaluations for parole consideration hearings.

Pursuant to these orders, along with the above-referenced Penal Code and regulatory sections, the BPH currently prepares psychological evaluations for parole consideration hearings. Additionally, the proposed regulation is necessary because on November 8, 2010, the Office of Administrative law determined that the “Board’s Psychological Report Process” contains provisions that meet the definition of a “regulation” as defined in [Government Code] section 11342.600 that should have been adopted pursuant to the APA.” *See* 2010 OAL Determination No. 27. As such, BPH submits these regulations. The provision of psychological risk assessments is necessary to assist BPH in determining whether an inmate sentenced to life with the possibility of parole poses a current unreasonable risk of danger to society if released on parole. *See* Penal Code sections 3041 and 3041.5 and 15 CCR sections 2281 and 2402.

The specific purpose of each subsection of the proposed text and the rationale supporting BPH’s determination that each amendment is reasonably necessary to carry out the purpose for which the regulation is proposed is as follows:

Subsection 2240(a) interprets Penal Code section 5068 to provide that all life inmates will receive a Comprehensive Risk Assessment (CRA) prior to their initial parole consideration hearing. It implements the Governor’s 2008-09 Budget which authorized continuous funding to allow BPH to conduct initial and follow-up psychological evaluations for parole hearings held pursuant to Penal Code sections 3041 and 3041.5. This funding was expressly approved by the Legislature in Assembly Bill No. 1781, “The Budget Act of 2008.” *See* Chapter 268, Statutes of 2008.

The subsection establishes that licensed psychologists employed by BPH will perform these assessments. It is necessary to separate this function from CDCR’s Mental Health Delivery System to allow CDCR to devote its resources to providing mental health treatment to inmates pursuant to *Coleman v. Schwarzenegger*. Furthermore, given the specialized nature of forensic risk assessment, the creation of FAD within BPH ensures that psychologists are adequately trained and qualified to conduct risk assessments. It also facilitates BPH administrative oversight of the evaluation process and eliminates the bias that may result when a psychologist serves the dual role of treating physician and evaluator or otherwise has a vested interest in the outcome of the evaluation or parole decision.

Finally, this section makes clear the validity period of psychological reports prepared before January 1, 2009. This language is necessary as a directive to staff to ensure that new CRAs are timely prepared and, as such, it will help eliminate hearing postponements for untimely or absent reports.

Subsection 2240(b) establishes that a CRA will be completed every five years and defines what information will be contained in the report. It contemplates that risk assessment instruments may be used to evaluate an inmate’s potential for future violence. This subsection is necessary to address concerns that psychological evaluations previously prepared for BPH lacked uniformity and didn’t include empirically supported

risk assessment measures. The standardization of information in the CRAs, as provided by this subsection, will promote report uniformity and will help make the reports easier to understand. Moreover, this language is necessary as a directive to staff to ensure that new CRAs are timely prepared and in accordance with the guidelines for the reports.

The text of this subsection provides that CRAs may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence. BPH included the language "structured professional judgment" and "actuarial" instruments because they are the two predominant approaches to assessing violence risk (See Skeem, J., and Monahan, J. (2011) Current directions in violence risk assessment, Current Directions in Psychological Science, 20(1), 38-42) and because they establish an acceptable minimum standard. The standard of practice in the community for violence risk assessments is the integration of clinical judgment and risk assessment instruments because the use of risk assessment instruments increases the validity and reliability of the psychological evaluation.

In August 2006, BPH convened a meeting of a panel of experts in Sacramento to recommend the most appropriate risk-assessment tools for the California lifer population. This meeting was moderated by Dr. Stephen Wyman, Special Consultant for BPH. Other experts participating in the panel included: Dr. Christopher Baird, National Council on Crime and Delinquency; Dr. Barry Krisberg, National Council on Crime and Delinquency; Dr. Kris Mohandie, Operational Consulting Inc.; Dr. Saul Rosenberg, U.C. San Francisco, Forensic Decision Sciences LLC; and Dr. Jennifer Skeem, U.C. Irvine. The consensus of the expert panel was that the HCR-20/PCL-R and LS/CMI were the most appropriate risk-assessment tools for the California lifer population, and the panel recommended this battery of tools to BPH.

BPH Senior Psychologists also conducted an exhaustive review of the scientific literature and research on the various risk assessment instruments. This review of the existing research and science, and the consensus determination of the experts (above) resulted in the recommendation to the BPH Executive Officer and the Secretary of CDCR, that the most viable and effective risk assessment instruments pertinent to the California life inmate population consists of using the (1) LS/CMI and (2) HCR-20/PCL-R. Additionally as appropriate, other focused assessment instruments would be employed for specific offender populations such as sex offenders (Static 99).

The risk assessment battery selected by BPH is necessary to assist BPH psychologists in anchoring their clinical opinions regarding violence risk by insuring overall objectivity and reliability; this in turn will aid BPH hearing panels in determining suitability for parole. Additionally, the *Rutherford* court ordered BPH to develop a streamlined risk assessment tool.

Subsection 2240(c) interprets Penal Code section 5068 and establishes the schedule for providing a Subsequent Risk Assessment (SRA) prior to a subsequent parole consideration hearing. It implements the Governor's 2008-09 Budget which authorized continuous funding to allow BPH to conduct initial and follow-up psychological

evaluations for parole hearings held pursuant to Penal Code sections 3041 and 3041.5. This funding was expressly approved by the Legislature in Assembly Bill No. 1781, “The Budget Act of 2008.” *See* Chapter 268, Statutes of 2008.

The subsection establishes that licensed psychologists employed by BPH will perform these assessments. This is necessary to ensure that psychologists are adequately trained and qualified to conduct these assessments and facilitates administrative oversight of the evaluation process.

This subsection defines what information will generally be contained in the SRA and it details that an SRA will generally not be prepared for certain hearings or following certain hearing events. This is necessary so that interested parties will have a common understanding of what information will be contained in the SRA as well as when the SRA will be prepared. Also, it is necessary to detail the process for the preparation of SRAs to help eliminate hearing postponements for untimely or absent reports.

Subsection 2240(d) makes it clear that the CDCR inmate appeal process does not apply to the Board’s psychological reports. Psychological reports are prepared solely to assist a hearing panel or BPH in determining whether an inmate is suitable for parole. Pursuant to Section 3084.1 of Title 15 of the California Code of Regulations, an inmate may only appeal “any department decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare.” This section is necessary because there has been some confusion about whether the CDCR’s inmate appeal process is available to challenge psychological reports prepared by BPH—such reports are not subject to CDCR’s appeal process.

The inmate or his or her attorney may challenge the report and its conclusions at the hearing. Unlike the CDCR appeal process, an inmate is entitled to be represented by an attorney at a parole consideration hearing. *See* Penal Code section 3041.7 and 15 CCR section 2256. The hearing panel will then determine what evidentiary weight to give to the psychological report. Additionally, an inmate has the right to enter a written response to a psychological report pursuant to Penal Code section 3041.5 (a)(1) and 15 CCR section 2247.

Subsection 2240(e) defines a substantial error in a psychological report and describes how such errors will be reviewed if they are identified by a hearing panel. This subsection recognizes that certain factual errors may have a significant impact on the validity of the psychologist's opinions. The most obvious example is a factual error directly related to the circumstances of the Life Crime. This subsection promotes due process by providing a remedy to challenge evaluations that contain factually inaccurate descriptions of the Life Crime or other substantial errors that are likely to have a significant impact on the validity of the report. Moreover, the language is necessary as a directive to staff to ensure that a substantial error in a psychological report is handled according to protocol.

Subsection 2240(f) describes how administrative factual errors in a psychological report will be reviewed if they are identified by the hearing panel. This subsection promotes due process by providing a remedy to challenge evaluations that contain three or more factual administrative errors. Factual errors unrelated to the Life Crime are unlikely to have a significant impact on the validity of the psychologist's opinions except when they are present in multitude. Additionally, the definition of factual administrative errors provides clear parameters and discourages hearing postponements due to non-factual errors related to disagreement with the psychologist's reasoning and opinions, disputed statements made during clinical interviews, and statements that otherwise have little bearing on the psychologist's risk assessment opinions. Moreover, the language is necessary as a directive to staff to ensure that administrative errors in a psychological report are handled according to protocol.

Subsection 2240(g) establishes that life inmates who don't reside in California may not receive a risk assessment or other psychological evaluation due to other state's licensing requirements for psychologists and variations in confidentiality laws from state-to-state. FAD is unable to provide risk assessments for life inmates who reside out-of-state because of licensure issues, resource issues, and confidentiality issues. Therefore, the provision of a psychological report for life inmates who reside out-of-state is at the discretion of the out-of-state institution and in accordance with that state's confidentiality laws. This subsection is necessary to provide a common understanding to staff and interested parties that a CRA or psychological report may not be available at parole hearings for life inmates who don't reside in California. It will help eliminate hearing postponements for untimely or absent reports by making clear the psychological report process for inmates who don't reside in California.

Subsection 2240(h) establishes that this regulation will not apply to medical parole hearings or applications for sentence recall. The criteria for a decision in medical parole hearings (*see* Penal Code section 3550 (g)) or applications for sentence recall (*see* Penal Code section 1170 (e)) is different than the criteria at a parole suitability hearing. Therefore, a psychological risk assessment is not necessary to reach a decision in medical parole hearings or applications for sentence recall. This subsection is necessary to avoid any possible confusion by making it clear that a CRA or SRA will not be prepared for medical parole hearings or applications for sentence recall.

Note: Authority cited: Section 12838.4, Government Code; Sections 3052, and 5076.2 Penal Code. Reference: Sections 3041, 3041.5 and 5068 Penal Code and California Code of Regulations, Title 15, Sections 2281, 2282 and 2402.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORTS OR DOCUMENTS

1. Notes from August 2, 2006 Panel of Experts Meeting on Psychological Assessment Tools

An independent panel of experts met on August 2, 2006, at the Board of Parole Hearings (BPH) Headquarters in Sacramento, California to develop a consensus on a psychological assessment methodology for adult inmates sentenced in California to a life term with the possibility of parole.

This meeting was moderated by Dr. Stephen Wyman, Special Consultant, BPH. Experts participating in the panel were:

Dr. Christopher Baird, National Council on Crime and Delinquency

Dr. Barry Krisberg, National Council on Crime and Delinquency

Dr. Kris Mohandie, Operational Consulting Inc.

Dr. Saul Rosenberg, U.C.—San Francisco, Forensic Decision Sciences LLC

Dr. Jennifer Skeem, U.C.—Irvine

Standardized Risk Assessment

The primary use of the psychological evaluation for life parole consideration hearings is to provide an assessment of the inmate's risk of future violence should he or she be granted parole and released into the community. This risk assessment is only one factor to be considered in determining an inmate's parole suitability.

For an assessment of an inmate's potential risk to the community to be relevant it must be based upon scientifically validated analysis, rather than simply the opinion of a particular evaluator. Assessment of dangerousness has been the subject of much research in the forensic scientific community over the past decade, and a number of valid and reliable instruments have been developed and implemented in prisons in North America and internationally.

The Board of Parole Hearings convened a meeting of experts from the forensic scientific community to reach a consensus, based on the "state of the art," what risk and needs assessment instruments would best be employed by the State of California for adult inmates sentenced to a life term with the possibility of parole.

Consensus Recommendation

The panel of experts agreed that a multi-method psychological assessment battery would best be employed by the State of California for adult inmates sentenced to a life term with the possibility of parole. This multi-method psychological assessment should include a clinical psychological evaluation and a battery of objective risk assessment instruments.

The clinical psychological evaluation would include both a detailed interview with the inmate and the administration of the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). The MMPI-2 will be used to assess personality and psychopathology.

A risk assessment battery would be administered inmates to determine their risk of violence. The panel determined that the two best objective risk assessment tools to

employ on the population of adult inmates sentenced to a life term with the possibility of parole were the Level of Service/Case Management Inventory (LS/CMI) and the HCR-20 (Historical, Clinical, and Risk Management). Both the LS/CMI and HCR-20 would be administered to the inmate as part of the risk assessment battery.

Where the risk assessment battery yields a finding that the inmate has a high risk of violence, no additional risk or needs assessment tests will be conducted on the inmate.

Where the risk assessment battery yields a finding that the inmate has a low or moderate risk of violence, additional risk or needs assessment tests may be conducted on the inmate. Any additional assessments will take into account the inmate's status as a sexual offender, a substance abuser, or as having a diagnosed mental disorder. The panel will determine at its next meeting what, if any, additional risk or needs assessment tools would be appropriate for these segments of the adult inmate population sentenced to life with the possibility of parole.

Future Research

The panel felt that it would be valuable to conduct research to validate the reliability of risk assessment results for an inmate population sentenced to life with the possibility of parole. Areas of particular need for future research include:

- Track the performance of the LS/CMI and HCR-20 for predicting institutional behavior.
- Compare the LS/CMI and HCR-20 for overlap, reliability, and incremental validity.
- Analyze the effect of rater reliability on the administration of risk assessment tests and their corresponding results.
- Deploy CAIS or CMI on subsets of inmate population to evaluate the effect of various needs assessment instruments.

2. November 2006 Recommendation from BPH's Forensic Assessment Division

I. Introduction to Risk Assessment of Violence

A large body of research demonstrates that dangerousness and violence risk potential cannot be reliably predicted. Human behavior is complex and does not follow a formulaic equation. Moreover, prediction of low occurrence behaviors is difficult if not impossible to achieve. Violence is a low base rate behavior (less than 1%), thus compounding problems in accurate prediction. Error occurs in the risk assessment process when an offender deemed high-risk is released and does not recidivate (referred to as a 'false positive') or when an offender classified as low-risk re-offends after release (a 'false negative'). Rather than predict violence, forensic psychologists are asked to assess risk of or determine the likelihood of dangerousness or violence.

Formal methods of assessing risk can be categorized as either actuarial or clinical. Actuarial methods require the collection of a large amount of historical data which can indicate whether the offender is likely to re-offend. Risk factors measured by actuarial tools can be static (unchangeable) or dynamic (changeable). For instance, an actuarial risk prediction tool may measure static variables, such as the number of prior convictions, age at the time of the offence and the offender's relationship to the victim, etc. Dynamic factors include response and amenability to treatment, acceptance of responsibility, motivation, etc.

When an offender is assessed using an actuarial tool, his particular characteristics are inventoried and his risk is determined by the extent to which he possesses various risk factors associated with recidivism. The information considered in the assessment process, drawn from an institutional intake report and case files, typically includes the offender's education level, employment status, relationship history, substance use, and known or suspected mental disabilities, in addition to the individual's criminal history. This information will later aid in assessing the risk posed by offenders being considered for release. For example, if a certain characteristic common to those who recidivate is found in a potential parolee, that person's risk is adjudged greater than one who does not display the trait. Similarly, individuals who display characteristics common to non-recidivists will be considered lower risk.

Actuarial risk assessment focuses primarily on static, or unchangeable, factors that influence recidivism. Several studies have found that the static risk factor with the strongest influence on general recidivism is prior contact with the criminal justice or mental health systems. Violent offense recidivism is best predicted by prior violent offenses, mental illness, and a history of substance abuse. However, an inventory of static variables alone does not provide a clear picture of risk. Several actuarial risk assessment tools also measure dynamic factors associated with risk of violence. Dynamic variables include: motivation, response to treatment, remorse, acceptance of responsibility, etc.

In contrast to actuarial risk assessment, clinical assessments are based on the professional opinions of psychologists and psychiatrists. A clinical assessment typically involves a judgment by a mental health professional concerning the risk a specific individual poses. The risk factors used in a clinical assessment include presence of mental illness, attitudes, behavior, amenability to treatment, etc.

It should be noted that the ability to accurately distinguish offenders who will recidivate from those who will not, strictly using clinical methods, is questionable. When assessing an individual, clinicians often fail to take into account risk factors such as age, gender and criminal history. Further, studies indicate that clinicians often come to different conclusions after assessing the same individual, calling into question inter-rater reliability (i.e., clinical agreement).

To improve the accuracy of risk assessment, researchers, clinicians and policy makers have put forth several suggestions. The combined use of actuarial and clinical

assessments provides a greater degree of accuracy than one type of assessment used in isolation. Further, in determining risk, both static and dynamic factors should be taken into consideration.

II. Board of Parole Hearings (BPH), Forensic Assessment Division (FAD)

Inmates serving Life Term prison commitments (Penal Code Section 1168(b)), with the possibility of parole, appear for Initial Parole Consideration Hearings before the Board of Parole Hearings (BPH) when they are within one year of their minimum eligible parole date. Commitment offenses in these cases involve murder, kidnapping, or, since its inception in 1992, Three Strike cases. In preparation for these and Subsequent Parole Hearings (conducted in intervals of from one to five years following an initial denial of parole) CDCR provided BPH with evaluations prepared by counseling and mental health staff, as required by Penal Code Section 5068. In recent months, the responsibility for conducting the psychological evaluations was transferred from the individual CDCR institutions to a new unit of independent evaluating psychologists, employed by the BPH. The sole function of the new unit, named the Forensic Assessment Division (FAD) of BPH, is to conduct the psychological evaluations for purposes of the parole hearings.

The goals of the Forensic Assessment Division of BPH are as follows: (1) To provide a clinically appropriate and thorough psychological evaluation of Life Term inmates in order to assess overall risk of recidivism and violence risk potential, (2) standardization and uniformity in the report format, so as to promote stability and ease of comprehension of the material, (3) To train all staff psychologists in the use of empirically validated actuarial risk assessment instruments and to have these data incorporated into the psychological report, (4) To prioritize backlog cases for psychological evaluations, and (5) To have all psychological reports, and/or addendum reports, submitted in a timely manner.

III. Selection of Risk Assessment Tools

An exhaustive literature review was conducted to determine the most appropriate risk assessment tools to use for our particular population (i.e., life term inmates). The collective review and analysis process of the various risk assessment instruments included a consensus determination by a diverse consortium of highly respected experts, as well as thorough review by BPH Senior Psychologists. The collective education, experience, and knowledge of the existing research and science resulted in the recommendation to the BPH Executive Officer and the Secretary of CDCR, that the most viable and effective risk assessment instruments pertinent to the California life inmate population consists of using the (1) LS/CMI and (2) HCR-20/PCL-R. Additionally as appropriate, other focused assessment instruments would be employed for specific offender populations such as sex offenders (Static 99).

A number of other instruments were considered, including the COMPAS, an instrument used by CDCR to assist in decision-making regarding the placement, supervision, and case-management of offenders in community settings. The COMPAS is especially

helpful to probation, parole, jail pretrial/early release and community corrections. After further analysis, it was determined that the focus of COMPAS on issues of community-based placement and alternative sentencing options was incompatible with BPH's purpose of determining violence risk potential, dangerousness and criminal recidivism among indeterminate Life term inmates. Furthermore, the risk assessment tools selected would have to withstand legal rigors and scientific scrutiny demanded by any instrument used in the forensic arena (see *Daubert vs. Merrill Dow Pharmaceuticals* and *Frye vs. U.S.*).

The adoption of risk assessment instruments by the BPH is consistent with changes set to occur within the CDCR organization. The BPH psychologist evaluations represent a midpoint in the continuum of assessment. Starting at the reception center, future CDCR admissions will be administered psychological instruments for purposes of determining placement and treatment needs. These instruments will be administered by CDCR institutional staff. Prior to parole, inmates with determinate sentences will be given a Needs Assessment relative to case management needs in a less structured setting. The BPH FAD fulfills the space in the continuum for inmates with an indeterminate sentence who are eligible for parole consideration.

The risk assessment tools selected by BPH provide invaluable, objective data on violence risk potential and dangerousness of the Lifer inmate population. Such information is critical to assist BPH panels in their decision making process to grant or reject parole. Consequences of not using the risk assessment tools are numerous. Some of the most glaring concerns are as follows: (1) The absence of objective risk assessment tools results in decreased validity and reliability of the psychological evaluation report, thus potentially misclassifying violence risk levels. Public safety would be jeopardized should an individual who is deemed high risk of violence not be appropriately identified. Inversely, civil liberties of an inmate would be violated should they be misclassified as high risk when, in fact, they represent a low risk of dangerousness in the community. (2) The standard of practice in the community for violence risk assessments is the integration of clinical judgment and risk assessment instruments. To not incorporate risk assessment instruments into the overall evaluation would be in conflict with community standards of practice. (3) The Rutherford lawsuit requires that BPH utilize empirically validated risk assessment tools in the Lifer evaluations.

Scoring and interpretation of the risk assessment tools requires that the psychologist conduct a comprehensive clinical interview, as well as a thorough review of the inmate's records (i.e., C-File and UHR records). A brief summary of the risk assessment instruments will be provided herein.

IV. Risk Assessment Instruments

The battery of risk assessment tools consist of the (1) LS/CMI and (2) HCR-20/PCL-R. Additionally as appropriate, other focused assessment instruments would be employed for specific offender populations such as sex offenders (Static 99).

1. Level of Service/ Case Management Inventory (LS/CMI)

The LS/CMI was designed originally to assist probation officers in planning their supervision of probationers and parolees in Ontario, Canada. It is a 43-item instrument composed of 8 subscales of criminogenic factors (listed below under Key Areas Measured). The items are scored following an interview and file review in Section 1 by either a Yes/No response, or a numeric range of 0 or 1 (level of dissatisfaction or need for improvement) to 2 or 3 (varying levels of satisfaction and little/no need for improvement) format. Section 2 consists of 21 items addressing Specific Risk/Need Factors, such as Personal Problems with Criminogenic Potential, and History of Perpetration. The LS/CMI was normed on 157,947 North American youth and adult offenders—60,156 U.S. adult and youth offenders from 10 jurisdictions, and 97,791 Canadian community and institutionalized adult and youth offenders. The LS/CMI appears well correlated with general criminal recidivism. A recent study from Washington supports the utility of this instrument in evaluating risk of criminal recidivism among a lifer population (Skeem, personal communication).

Key Areas Measured

- Criminal History
- Education/Employment
- Family/Marital
- Leisure/Recreation
- Companions
- Alcohol/Drug Problems
- Attitudes/Orientation
- Antisocial Pattern

2. Historical Clinical Risk Management- 20 (HCR-20)

The HCR-20 is an assessment tool that provides an estimate of overall risk of violence. The manual was published in 1997 and is used for criminal justice, forensic and civil psychiatric populations. Compared to the some other widely used risk assessment measures (e.g., VRAG), a major strength of the HCR-20 is its evaluation of both static and dynamic risk variables.

The HCR-20 consists of three main areas: historical (10 variables), clinical (5 variables), and risk management (5 variables). The HCR-20 domains are coded with a rating of 0 (available evidence contradicts the presence of the item), 1 (available information suggests the possible presence of the item), or 3 (available information indicates the presence of the item).

Historical (Past)

- Previous Violence
- Relationship Instability

- Employment Problems
- Substance Abuse Problem
- Major Mental Illness
- Psychopathy
- Early Maladjustment
- Personality Disorder
- Prior Supervision Failure

Clinical (Present)

- Lack of Insight
- Negative Attitudes
- Active Symptoms of a Major Mental Illness
- Impulsivity
- Unresponsive to Treatment

Risk Management (Future)

- Plans Lack Feasibility
- Exposure to Destabilizers
- Lack of Personal Support
- Noncompliance with Remediation Attempts
- Stress

The Hare Psychopathy Checklist-Revised (PCL-R)

The Hare Psychopathy Checklist-Revised (PCL-R) is required for scoring of the HCR-20 (see Item Six under Historical variables). It is an assessment tool designed to identify psychopathic tendencies. The PCL-R is accepted by most in the field as the “gold standard” for determining the presence and extent of psychopathy in a person. Psychopathy is not a diagnosis in the DSM-IV-TR. Rather, it is conceptualized as a constellation of cognitive, emotional and behavioral symptoms. The symptoms of psychopathy include: lack of a conscience or sense of guilt, lack of empathy, egocentricity, pathological lying, repeated violations of social norms, disregard for the law, shallow emotions, and a history of victimizing others.

The PCL-R is not a risk assessment per se. Developed in the early 1990s, the test was originally designed to identify the degree of a person's psychopathic tendencies. However, a large body of data suggests that the presence of psychopathy is correlated with violence. Because psychopaths are often repeat offenders who demonstrate a likelihood of committing sexual assaults or other violent crimes, the PCL-R has demonstrated its utility in the area of violence risk assessments.

The PCL-R was normed on a Canadian forensic sample, leading to concerns regarding the generalizability of this instrument to a US sample. However, the instrument has been

cross validated on criminal justice populations and among an ethnically diverse U.S. incarcerated population.

The Hare PCL-R involves both a clinical interview and a review of the subject's file records and history. During the evaluation, the psychologist scores 20 items that measure central elements of the psychopathic character. The items cover the nature of the subject's interpersonal relationships; his or her affective or emotional involvement; responses to other people and to situations; evidence of social deviance; and lifestyle. It is based on two different constructs that define a psychopath: Factor one characteristics consist of personality traits such as Manipulative and deceitful, glib and superficial, lack of empathy, and egocentric and grandiose. Factor two characteristics are the social deviant behaviors that consist of being impulsive, the need for excitement, having poor behavior controls, a lack of responsibility, early behavior problems and adult antisocial behavior.

The twenty traits assessed by the PCL-R score are:

- Glib and superficial charm
- Grandiose (exaggeratedly high) estimation of self
- Need for stimulation
- Pathological lying
- Cunning and manipulativeness
- Lack of remorse or guilt
- Shallow affect (superficial emotional responsiveness)
- Callousness and lack of empathy
- Parasitic lifestyle
- Poor behavioral controls
- Sexual promiscuity
- Early behavior problems
- Lack of realistic long-term goals
- Impulsivity
- Irresponsibility
- Failure to accept responsibility for own actions
- Many short-term marital relationships
- Juvenile delinquency
- Revocation of conditional release
- Criminal versatility

V. Summary and Conclusions

Numerous instruments were thoroughly reviewed for possible inclusion in developing a battery for determining violence risk potential among parole eligible lifer term inmates serving an indeterminate sentence. After careful review and analysis, carried out by a consortium of community experts and BPH Senior Psychologists, the following two instruments were selected: (1) LS/CMI, and (2) HCR-20/PCL-R. Alternative measures, including the COMPAS, were deemed inappropriate for both the target population and the referral question (i.e., risk of dangerousness and violence). The risk assessment

battery will assist BPH psychologists in anchoring their clinical opinions regarding violence risk by insuring overall objectivity and reliability; this in turn will aid the BPH panel in determining suitability for parole.

CONSIDERATION OF REASONABLE ALTERNATIVES

The Board has not identified any alternatives to the proposed regulatory change that would fully meet its objectives.

EFFECT ON SMALL BUSINESS

The subject of this regulatory action directly affects prisoners serving life sentences. The Board has not identified any alternatives that would lessen any adverse impact on small businesses. However, no impact on small business is expected.

PUBLIC COMMENT PERIOD

The modifications to the Revised Initial Statement of Reasons and the Revised Notice of Proposed Rulemaking are available for public inspection at the Board of Paroles Hearings office located at 1515 K Street, Sacramento, CA 95814, from July 1, 2011, and ending July 15, 2011, between 8:00 a.m. and 5:00 p.m.

The comment period on these changes shall close on July 15, 2011, at 5:00 p.m. Submit any comments to Anne M. Cervantes, Regulations Coordinator, Board of Paroles Hearings, P.O. Box 4036, Sacramento, California 95812-4036; fax to (916) 322-3475; or by e-mail at cdcrbphregulations@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on July 15, 2011.